

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**
-----X
JANE DOE,

Plaintiff,

Civil Action No. 17-civ-6029

-against-

JOHN ROE,

Defendant.
-----X

Plaintiff JANE DOE, (hereinafter “Plaintiff”) by her attorneys, Nesenoff & Miltenberg, LLP, as and for her Answer to Defendant JOHN ROE’s (“Defendant”) Counterclaim (the “Counterclaim”) in the above-entitled action, respectfully alleges as follows:

ANSWER TO SECTION-NATURE OF COUNTERCLAIM

1. Plaintiff denies all allegations set forth in paragraph “136” of the Counterclaim except to admit only that Plaintiff was a female undergraduate student at HWS and Defendant was a male undergraduate student at HWS.
2. Plaintiff denies all allegations set forth in paragraph “137” of the Counterclaim.
3. Plaintiff denies all allegations set forth in paragraph “138” of the Counterclaim.
 - a. Plaintiff denies all allegations set forth in paragraph “138(a)” of the Counterclaim;
 - b. Plaintiff denies all allegations set forth in paragraph “138(b)” of the Counterclaim;
 - c. Plaintiff denies all allegations set forth in paragraph “138(c)” of the Counterclaim, except to admit only that Plaintiff walked from an off-campus party back to Defendant’s on-campus dorm room;
 - d. Plaintiff admits all allegations set forth in paragraph “138(d)” of the Counterclaim;
 - e. Plaintiff denies all allegations set forth in paragraph “138(e)” of the

Counterclaim;

f. Plaintiff denies all allegations set forth in paragraph “138(f)” of the Counterclaim;

g. Plaintiff denies all allegations set forth in paragraph “138(g)” of the Counterclaim;

h. Plaintiff denies all allegations set forth in paragraph “138(h)” of the Counterclaim except to admit only that Plaintiff engaged in oral sex with Defendant. Plaintiff expressly denies that such contact was consensual.

4. Plaintiff denies all allegations set forth in paragraph “139” of the Counterclaim.

5. Plaintiff denies all allegations set forth in paragraph “140” of the Counterclaim except to admit only that Plaintiff lodged an official report with HWS on December 18, 2016 and reported that Defendant stalked her in December 2016 and engaged in additional sexual misconduct. Plaintiff expressly denies that any reports and/or accusations were false or made with malice.

ANSWER TO SECTION-THE PARTIES

6. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “141” of the Counterclaim.

7. Plaintiff admits the allegations set forth in paragraph “142” of the Counterclaim.

ANSWER TO SECTION-JURISDICTION AND VENUE

8. Plaintiff maintains that the allegations in paragraph “143” of the Counterclaim constitute legal conclusions to which no response is necessary. To the extent a response is required, Plaintiff admits only that she is a resident and domiciliary of the State of Connecticut and that this court has jurisdiction over Defendant’s counterclaim. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph “143” of the Counterclaim.

9. Plaintiff maintains that the allegations in paragraph “144” of the Counterclaim constitute legal conclusions to which no response is necessary. To the extent a response is required, Plaintiff admits that venue is proper in this Court.

ANSWER TO SECTION-OPERATIVE FACTS

10. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “145” of the Counterclaim.

11. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “146” of the Counterclaim.

12. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “147” of the Counterclaim.

13. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “148” of the Counterclaim.

14. Plaintiff denies all allegations set forth in paragraph “149” of the Counterclaim.

15. Plaintiff denies all allegations set forth in paragraph “150” of the Counterclaim.

16. Plaintiff denies all allegations set forth in paragraph “151” of the Counterclaim.

17. Plaintiff denies all allegations set forth in paragraph “152” of the Counterclaim.

18. Plaintiff denies all allegations set forth in paragraph “153” of the Counterclaim.

19. Plaintiff denies all allegations set forth in paragraph “154” of the Counterclaim except to admit only that Plaintiff and Defendant walked from the Soccer House to O’Dells.

20. Plaintiff denies all allegations set forth in paragraph “155” of the Counterclaim.

21. Plaintiff denies all allegations set forth in paragraph “156” of the Counterclaim.

22. Plaintiff denies all allegations set forth in paragraph “157” of the Counterclaim.

23. Plaintiff denies all allegations set forth in paragraph “158” of the Counterclaim.

24. Plaintiff denies all allegations set forth in paragraph “159” of the Counterclaim.

25. Plaintiff denies all allegations set forth in paragraph “160” of the Counterclaim except to admit only that Defendant penetrated Plaintiff vaginally. Plaintiff expressly denies that any such contact was consensual.

26. Plaintiff denies all allegations set forth in paragraph “161” of the Counterclaim.

27. Plaintiff denies all allegations set forth in paragraph “162” of the Counterclaim.

28. Plaintiff denies all allegations set forth in paragraph “163” of the Counterclaim except to admit only that two females knocked on Defendant’s door.

29. Plaintiff denies all allegations set forth in paragraph “164” of the Counterclaim except to admit only that Plaintiff left O’Dells.

30. Plaintiff denies all allegations set forth in paragraph “165” of the Counterclaim.

31. Plaintiff admits all allegations set forth in paragraph “166” of the Counterclaim. Plaintiff expressly denies that any such report was false.

32. Plaintiff denies all allegations set forth in paragraph “167” of the Counterclaim except to admit only that Plaintiff reported to HWS that Defendant had stalked her on December 4, 2016 at the Beef and Brew and brushed his genital area against her buttocks. Plaintiff expressly denies that any such report was false.

33. Plaintiff denies all allegations set forth in paragraph “168” of the Counterclaim.

34. Plaintiff admits all allegations set forth in paragraph “169” of the Counterclaim.

35. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “170” of the Counterclaim.

36. Plaintiff denies all allegations set forth in paragraph “171” of the Counterclaim.

37. Plaintiff denies all allegations set forth in paragraph “172” of the Counterclaim.

38. Plaintiff denies all allegations set forth in paragraph “173” of the Counterclaim except to admit only that Defendant withdrew from HWS.

39. Plaintiff denies all allegations set forth in paragraph “174” of the Counterclaim.

- a. Plaintiff denies all allegations set forth in paragraph “174(a)” of the Counterclaim;
- b. Plaintiff denies all allegations set forth in paragraph “174(b)” of the Counterclaim;
- c. Plaintiff denies all allegations set forth in paragraph “174(c)” of the Counterclaim;
- d. Plaintiff denies all allegations set forth in paragraph “174(d)” of the Counterclaim;
- e. Plaintiff denies all allegations set forth in paragraph “174(e)” of the Counterclaim;
- f. Plaintiff denies all allegations set forth in paragraph “174(f)” of the Counterclaim.

40. Plaintiff denies all allegations set forth in paragraph “175” of the Counterclaim.

41. Plaintiff denies all allegations set forth in paragraph “176” of the Counterclaim.

ANSWER TO SECTION-COUNTERCLAIM

42. Plaintiff repeats and re-alleges each and every response set forth above with the same force and effect as if fully set forth herein.

43. Plaintiff denies all allegations set forth in paragraph “178” of the Counterclaim.

44. Plaintiff denies all allegations set forth in paragraph “179” of the Counterclaim.

45. Plaintiff denies all allegations set forth in paragraph “180” of the Counterclaim.

46. Plaintiff denies all allegations set forth in paragraph “181” of the Counterclaim.

47. Plaintiff denies all allegations set forth in paragraph “182” of the Counterclaim.

48. Plaintiff denies all allegations set forth in paragraph “183” of the Counterclaim.

49. Plaintiff denies all allegations set forth in paragraph “184” of the Counterclaim.

50. Plaintiff denies all allegations set forth in paragraph “185” of the Counterclaim.

51. Plaintiff denies all allegations set forth in paragraph “186” of the Counterclaim.

52. Plaintiff denies all allegations set forth in paragraph “187” of the Counterclaim.

53. Plaintiff denies all allegations set forth in paragraph “188” of the Counterclaim.

AFFIRMATIVE DEFENSES

54. Plaintiff hereby give notice to Defendant that she lacks sufficient knowledge or information upon which to form a belief as to the truth of certain allegations contained in the counterclaim, or specific knowledge of actions on Defendant’s part or other persons that contributed to or caused Defendant’s alleged damages.

55. Until Plaintiff avails herself of her rights of disclosure, Plaintiff cannot determine whether the below affirmative defenses will be asserted at trial. Plaintiff asserts these defenses in her answer to preserve her right to assert theses affirmative defenses at trial, to give Defendant notice of Plaintiff’s intention to assert these defenses, and to avoid waiving any of these defenses.

56. Plaintiff reserves her right to add additional affirmative defenses as may become known to Plaintiff during disclosure, by discovery or otherwise.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

57. Defendant’s Counterclaim fails, in whole or in part, to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

58. Defendant’s Counterclaim is barred, in whole or in part, because Plaintiff’s statements are protected by the doctrine of absolute privilege.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

59. Defendant's Counterclaim is barred, in whole or in part, because Plaintiff's statements are protected by the doctrine of qualified privilege.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

60. Defendant's Counterclaim is barred, in whole or in part, because Defendant has not suffered any injury or damage as the result of any act, conduct, or omission by Plaintiff.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

61. Defendant's Counterclaim is barred, in whole or in part, by the statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

62. Defendant's Counterclaim is barred, in whole or in part, because the challenged statement(s) are true or substantially true, and therefore not actionable.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

63. Defendant's Counterclaim is barred, in whole or in part, because Plaintiff lacked the requisite intent.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

64. Defendant's Counterclaim is barred, in whole or in part, because the challenged statement(s) were statement(s) of opinion and therefore not actionable.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

65. Defendant's Counterclaim is void as against public policy

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

66. Defendant's Counterclaim is barred as Plaintiff acted in good faith at all relevant times.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

67. Defendant's Counterclaim is baseless and retaliatory in nature in violation of any and all applicable laws and public policy.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

68. Defendant's Counterclaim is barred, in whole or in part, because of Defendant's culpable conduct.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

69. Defendant's Counterclaim is barred, in whole or in part, because contested statement(s) were not made with knowledge of their falsity or with reckless disregard of whether they were false.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

70. Defendant's Counterclaim is barred, in whole or in part, because Defendant has suffered no damages.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

71. Defendant's Counterclaim is barred, in whole or in part, because no damages suffered by Defendant, if any, were caused by any act of Plaintiff.

AS AND FOR A SEVENTEENTH DEFENSE

72. Defendant's Counterclaim is barred, in whole or in part, because Defendant has failed to mitigate his damages.

WHEREFORE, Plaintiff respectfully requests that this Court issue an Order:

- (i) dismissing Defendant's Counterclaim in its entirety;
- (ii) denying any and all relief prayed for in Defendant's Counterclaim;

- (iii) entering Judgment in favor of Plaintiff on Defendant's Counterclaim;
- (iv) granting Plaintiff the costs and disbursements of this action, including reasonable attorney's fees, pre- and post-judgment interest; and
- (v) awarding Plaintiff such other and further relief as the Court deems just and proper.

**Dated: New York, New York
January 17, 2018**

NESENOFF & MILTENBERG, LLP
Attorneys for Plaintiff

By: /s/ Andrew Miltenberg
Andrew T. Miltenberg, Esq.
Stuart Bernstein, Esq.
Gabrielle M. Vinci, Esq.
363 Seventh Avenue, Fifth Floor
New York, New York 10001
(212) 736-4500